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No. 84-777

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ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ARLINGTON COUNTY

and

MICHAEL KYLE,

Petitioners,

v.

ALVIN B. BISCOE, JR.

and

ELEANOR L. BISCOE,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

Petitioners submit that respondents' arguments only serve to underline the importance of this Court granting a writ of certiorari in this case.

1. Whatever else may be said about this case, the acts of petitioner Arlington County and its employee, Officer Kyle, plainly involve the exercise of the sovereign power of the State of Virginia to enforce Virginia's criminal laws. Respondents' willingness to argue that the events herein represent solely a "traffic-accident tort" emphasize

the need for this Court to set out what Constitutional limits exist on the ability of a forum state to interfere with the exercise of such sovereign activities by a sister state.

2. Respondents also argue that the Constitutional issues presented by this case are somehow less important because the litigants assessed with a $4 million damage award were a county and its police officer discharging the State's sovereign duty to enforce the law. The Constitutional issue involves the obligation of the forum state to respect the sovereign immunity rules of the sister state affecting the exercise of its governmental powers—a Constitutional question not affected in the least by the litigant raising these issues.

3. Respondents somewhat surprisingly embrace in this Court an obviously unconstitutional position taken by the D.C. Circuit in its opinion below. Respondents acknowledge that the District of Columbia Code limits the District's liability for harm caused by an emergency vehicle to liability for acts of gross negligence. But respondents argue that this provision applies only to District vehicles and allows the District to hold out-of-state emergency vehicles to a stricter standard.

Respondents never bother to explain how this discrimination can be defended as Constitutional, particularly where the District of Columbia has invited the out-of-state police officer into the District to conduct fresh pursuit of a criminal. Rather, respondents only argue that petitioners waived their objection to the use of a stricter ordinary negligence standard in this case. There is no basis in the record for their position. This objection was specifically made to the District Court and was explicitly addressed by the District Court in its opinion denying petitioners' motion for judgment notwithstanding the verdict (Pet. 31a). The District Court did not find a waiver and indeed acknowledged that the peti-

tioners had submitted instructions on this issue (Pet. 31a n.2). But, much more important than any debate over a waiver, petitioners submit that the willingness of District of Columbia courts to impose a tougher standard on an out-of-state Arlington County police officer than would be applied to a District of Columbia police officer emphasizes the importance of the Constitutional issue that this Court reserved in *Nevada v. Hall.* Unless forum state courts respect the immunity laws of sister states when exercise of sovereign, governmental activities such as criminal law enforcement is at stake, serious clashes between the states will increasingly threaten the cooperative federalism embodied in the Constitution.

For the reasons set out in their Petition and in this Reply Brief, petitioners respectfully request this Court to issue a writ of certiorari in this case.

Respectfully submitted,

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